

Magistrate Judge Paula L. McCandlis

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
ERIK MERCADO,  
  
Defendant.

CASE NO. MJ21-042

COMPLAINT for VIOLATION

Title 18, United States Code, Sections  
922(g)(1) and 924(a)(2)

BEFORE the Honorable Paula L. McCandlis, United States Magistrate Judge, at  
Seattle, Washington.

The undersigned complainant being duly sworn states:

**COUNT 1**  
**(Felon in Possession of Ammunition)**

On or about October 13, 2020, in Marysville, Snohomish County, within the Western  
District of Washington, and elsewhere, ERIK MERCADO, knowing that he had been  
convicted of a crime punishable by imprisonment for a term exceeding one year, to wit:  
*Conspiracy to Distribute Controlled Substances*, in violation of Title 21, United States Code,  
Sections 841(a)(1), 841(b)(1)(C), and 846, on or about August 8, 2014, in *United States v.*  
*Felipe Mercado-Gonzalez, et al.*, CR14-0082RSL, Western District of Washington; did  
knowingly possess in and affecting interstate and foreign commerce ammunition, to wit:

1 sixteen rounds of 9mm Luger and one round of .40 caliber Smith & Wesson ammunition, all  
2 of which had been shipped and transported in interstate commerce.

3 All in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).  
4

5 The undersigned complainant, being duly sworn, further states:

6 **COMPLAINANT'S BACKGROUND**

7 1. I, Terry A. Getsch, am a Special Agent (SA) with the Federal Bureau of  
8 Investigation (FBI) and have been so employed since July 2018. I am currently assigned to  
9 the FBI office in Bellingham, Washington in support of the Seattle Safe Streets Task Force  
10 and the Northwest Washington Safe Trails Task Force. Among other criminal offences, these  
11 task forces investigate drug trafficking organizations, illegal firearm possession and  
12 transnational organized crime. Prior to becoming an FBI Special Agent, I was employed  
13 from 2014 to 2018 as a Police Officer and Detective in the state of Georgia. In my time as a  
14 law enforcement officer, I have participated in numerous drug and firearms investigations  
15 involving but not limited to possession of illegally modified firearms, illegal possession of  
16 ammunition, possession of stolen firearms, drug possession offences and drug trafficking  
17 offenses. I have also interviewed drug dealers, confidential informants and drug users  
18 regarding the means and methods used by drug traffickers.

19 2. I am an investigative or law enforcement officer of the United States within the  
20 meaning of Section 2510(7) of Title 18, United States Code, in that I am empowered by law  
21 to conduct investigations and to make arrests for federal felony offenses.

22 3. The facts set forth herein are based on my own personal knowledge,  
23 knowledge obtained from other individuals during my participation in this investigation,  
24 including other law enforcement officers, interviews of cooperating witnesses, review of  
25 documents, records and photographs related to this investigation, communications with  
26 others who have personal knowledge of the events and circumstances described herein and  
27 information gained through my training and experience. Because this Complaint is  
28 submitted for the limited purpose of determining whether there is probable cause in support

1 of the application for an arrest warrant, it does not set forth each and every fact that I or  
 2 others have learned during the course of this investigation. I have set forth only the facts that  
 3 I believe are necessary to establish probable cause to believe that ERIK MERCADO has  
 4 committed the crime of Felon in Possession of Ammunition in violation of Title 18, United  
 5 States Code, Sections 922(g)(1) and 924(a)(2).

### 6 **PROBABLE CAUSE**

#### 7 *MERCADO Is a Convicted Felon*

8 4. Federal court records show that on May 9, 2014, MERCADO pleaded guilty to  
 9 *Conspiracy to Distribute Controlled Substances*, in violation of Title 21, United States  
 10 Code, Sections 841(a)(1), 841(b)(1)(C), and 846, in *United States v. Felipe Mercado-*  
 11 *Gonzalez, et al.*, CR14-0082RSL, Western District of Washington. On August 8, 2014, the  
 12 Honorable Robert S. Lasnik sentenced MERCADO to 36 months in custody, followed by  
 13 three years of supervised release. The judgment reflects that MERCADO was prohibited  
 14 from possessing firearms and ammunition.

#### 15 *October 5, 2020 Traffic Stop of MERCADO*

16 5. On October 5, 2020 the Skagit County Interlocal Drug Enforcement Unit  
 17 (SCIDEU) was contacted by Washington State Patrol Trooper Wilcox (WSP case 20-  
 18 017087). Trooper Wilcox explained that earlier in the morning she conducted a traffic stop  
 19 on I-5 within Skagit County. During that traffic stop, Trooper Wilcox arrested ERIK  
 20 MERCADO, the driver and sole occupant of the vehicle, on a Department of Corrections  
 21 (DOC) warrant for escape from community custody and DUI. Trooper Wilcox explained to  
 22 SCIDEU detectives that during the investigation she found several Percocet 30 mg pills in  
 23 MERCADO's pocket. Trooper Wilcox said that she applied for and was granted in Skagit  
 24 County District Court a search warrant for the vehicle that MERCADO was driving. During  
 25 the execution of the search warrant Trooper Wilcox said that she seized baggies, a scale  
 26 with brown tar residue on it, a bag containing suspected methamphetamine, a bag  
 27 containing suspected cocaine, a handgun and a box of ammunition. The handgun returned  
 28 confirmed stolen out of Bellingham.

1           6.       FBI SA Andrew Weathers and I have reviewed Trooper Wilcox's probable  
2       cause affidavit regarding the arrest of MERCADO. Trooper Wilcox has been employed by  
3       the Washington State Patrol since November of 2015, has served as a commissioned law  
4       enforcement officer for approximately three years, and is currently assigned as a Trooper in  
5       Skagit County, Washington. Trooper Wilcox's duties involve enforcing the laws of the  
6       State of Washington, including both criminal and non-criminal traffic related offenses.  
7       Trooper Wilcox's training and experience regarding investigations of these crime(s)  
8       includes the Washington State Patrol Basic Academy, Standardized Field Sobriety Testing  
9       (SFST) Training, 16-Hour Advanced Roadside Impaired Driving Enforcement (ARIDE)  
10      course in November of 2017, and Breath Alcohol Content (BAC)/SFST Refresher Training,  
11      most recently, in October of 2019. Trooper Wilcox has observed and personally conducted  
12      hundreds of DUI investigations, both alcohol and drug related, and has received specialized  
13      training regarding these investigations. Trooper Wilcox has also been involved in numerous  
14      drug related investigations and seizures to include the possession of drugs, paraphernalia  
15      and items used in the distribution/selling of drugs and has received specialized training  
16      regarding these investigations.

17           7.       On October 5, 2020, at approximately 1:04 a.m., Trooper Wilcox was traveling  
18      southbound on I-5 near milepost 221 in Skagit County. Trooper Wilcox observed a blue  
19      Chevrolet Cruz (WA/BUR9510) (the Target Vehicle), also traveling southbound, ahead of  
20      her. Trooper Wilcox observed the Target Vehicle was bouncing back and forth from line to  
21      line. Trooper Wilcox performed a registration check for the Target Vehicle, and it returned  
22      that the registered owner, Erik MERCADO, had a felony warrant for DOC escape  
23      community custody. Trooper Wilcox activated her emergency lights to initiate a traffic stop.  
24      The Target Vehicle slowly came to a stop on the right shoulder near milepost 221.

25           8.       Upon contact with the Target Vehicle, Trooper Wilcox smelled a medium odor  
26      of burnt marijuana coming from it. Trooper Wilcox observed that MERCADO was the  
27      driver and sole occupant of the vehicle, that MERCADO's eyes were glossy and was on the  
28      phone talking to someone telling them his location, and that MERCADO was shaking.

1           9. Trooper Wilcox asked MERCADO to step out of the Target Vehicle.  
2 MERCADO agreed to perform a voluntary field sobriety test, which he failed. Trooper  
3 Wilcox observed MERCADO's eyelids were fluttering and he was swaying front to back.  
4 MERCADO admitted to consuming a bowl of marijuana earlier. Based on Trooper  
5 Wilcox's training, experience, and totality of the circumstances, Trooper Wilcox determined  
6 MERCADO was under the influence and should not have been driving a motor vehicle. He  
7 was placed in custody and read his *Miranda* Rights.

8           10. Trooper Wilcox performed a search of MERCADO's person incident to arrest  
9 and in his pants pocket, Trooper Wilcox located a clear baggie with four round pills in it.  
10 The pills appeared to have a pressed logo on them. MERCADO stated they were Percocet.  
11 He said he did not know if they had fentanyl in them.

12           11. MERCADO refused a consent search of his vehicle. Trooper Wilcox observed  
13 in plain view on the driver's side door pocket of the vehicle there was a clear plastic baggie  
14 and an object that appeared to be a scale. MERCADO refused a voluntary blood draw.

15           12. A driver's check for MERCADO confirmed he had a felony DOC warrant for  
16 assault 2, has one prior DUI in the last 10 years, is a supervised person, is a violent  
17 offender, is a gang member associate and has VUCSA history. Trooper Wilcox wrote and  
18 applied for a search warrant for the MERCADO's blood and the vehicle (the Target  
19 Vehicle). Both warrants were approved by Court Commissioner Jenifer Howson.

20           13. While executing the vehicle search warrant, Trooper Wilcox located multiple  
21 small clear plastic baggies, a baggie containing a white crystalized substance, and a scale in  
22 the driver's side door. Trooper Wilcox observed a black handgun under the driver's seat.  
23 The firearm appeared to be loaded. As MERCADO is a convicted felon, Trooper Wilcox  
24 then wrote and applied for an amended search warrant to retrieve the firearm. The warrant  
25 was approved by Court Commissioner Jenifer Howson.

26           14. Trooper Wilcox retrieved the firearm, and it had a round in the chamber.  
27 Trooper Wilcox performed a check on the firearm through WSP Communications and was  
28

1 advised that it was a stolen firearm out of Bellingham. The firearm is further described as a  
2 9mm Sig Sauer P938 handgun bearing serial number 52B089459.

3 15. In the Target Vehicle's trunk, Trooper Wilcox found a blue backpack. In a  
4 pocket in the blue backpack, there was a scale next to a plastic bag containing a white  
5 powder. Based upon Trooper Wilcox's training and experience, Trooper Wilcox believed  
6 the white powder was cocaine. In the trunk where the spare tire is stored, Trooper Wilcox  
7 located a firearm holster and a box containing 29 rounds of .38 caliber ammunition. Trooper  
8 Wilcox also located multiple papers with MERCADO's name on them in the trunk. Per  
9 DOL, Erik MERCADO is the registered owner of the Target Vehicle, and his mother is the  
10 legal owner of the vehicle.

11 16. Based upon MERCADO being the registered owner of the vehicle,  
12 MERCADO being the only occupant in the Target Vehicle, MERCADO's paperwork by the  
13 blue backpack containing suspected drugs and a scale, the stolen firearm being under  
14 MERCADO's seat, and the four pills being located in MERCADO's pocket, Trooper  
15 Wilcox believed the items located/seized from the contact were MERCADO's. Trooper  
16 Wilcox asked MERCADO where he got the firearm, and MERCADO stated he did not want  
17 to talk to Trooper Wilcox. Based on the amount of the white powdery substance in the blue  
18 backpack, the scale, and the small clear baggies in the Target Vehicle, Trooper Wilcox  
19 believed MERCADO possessed the suspected cocaine with the intent to deliver it.<sup>1</sup>

20 17. After the search of the Target Vehicle was concluded, it was released to  
21 MERCADO's mother.

22 18. Trooper Wilcox transported MERCADO to Skagit Valley Hospital for a blood  
23 draw. The blood draw was executed; toxicology results are pending. After the blood draw  
24

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25  
26 <sup>1</sup> The drugs seized from the Target Vehicle (the four "M-30" pills, the suspected cocaine, and the suspected  
27 methamphetamine) have been transferred to the Seattle FBI and submitted for testing. The DEA Laboratory has tested  
28 the pills and has confirmed the presence of Fentanyl. On October 7, 2020, detectives tested the white powder using a  
TruNarc device, and it came back presumptive positive for cocaine. The cocaine weighed 36.7 gross grams (weight  
includes packaging) of cocaine, and the quantity would be considered consistent with distribution. The remaining lab  
analysis is pending.

1 was executed, Trooper Wilcox transported MERCADO to the Skagit County Jail, where he  
2 remains in custody.

3 19. MERCADO is presently charged in *State v. Erik Felipe Mercado*, Skagit  
4 County Superior Court, cause no. 20-1-00755-29, with Unlawful Possession of a Firearm in  
5 the First Degree, Possession of a Controlled Substance Other than Marijuana (Percocet),  
6 and Driving Under the Influence.

7 *Additional Search Warrants for Phones and for MERCADO's Residence*

8 20. Trooper Wilcox told detectives that during the search of MERCADO, Trooper  
9 Wilcox located a black cell phone on MERCADO's person. Trooper Wilcox advised that  
10 MERCADO's cell phone was taken, along with MERCADO, to the Skagit County Jail. On  
11 October 6, 2020, Task Force Officer (TFO) Detective Paul Pacini called the Skagit County  
12 Jail and confirmed that there was a black cell phone in MERCADO's personal property at  
13 the Skagit County Jail. On October 7, 2020, detectives were granted a warrant in Skagit  
14 County District Court in order to obtain the cell phone from MERCADO's personal  
15 property at the jail. This phone is further described as a black Samsung cell phone with a  
16 cracked screen. This phone is presently in the custody of the FBI and has been designated  
17 as FBI evidence item 1B34.

18 21. As investigators learned from Trooper Wilcox and from reviewing the  
19 photographs taken in conjunction with Trooper Wilcox's search of the Target Vehicle, there  
20 was a black cell phone with a white "KING" sticker on the back in the Target Vehicle.  
21 Investigators believed the term "KING" referred to the South Side Kings Sureno gang in  
22 Skagit County. This phone was left in the Target Vehicle, which was, as noted earlier,  
23 released to MERCADO's mother. Washington Department of Corrections indicate that  
24 MERCADO is a validated Sureno gang member. Based on SA Weather's training and  
25 experience and discussions with other law enforcement officers, he is aware that the South  
26 Side Kings are a Skagit County-based Sureno gang. Investigators believe that the presence  
27 of the "KING" sticker on the phone that was in the Target Vehicle with MERCADO is  
28 consistent with MERCADO being the user of this phone.



1        22. Investigators believed that MERCADO resided with his mother at 16800 27<sup>th</sup>  
2 Ave NE, Apt A305, Marysville, WA (hereinafter Target Location), as this is the address on  
3 his WA driver's license and is the address to which the Target Vehicle is registered.

4        23. Additionally, after MERCADO was arrested on October 5, 2020, investigators  
5 spoke with MERCADO's federal probation officer, who confirmed that the Target Location  
6 is his address of record and that the officer has visited MERCADO at this address. The  
7 probation officer advised MERCADO lives in the apartment with his mother and that his  
8 bedroom is located at the end of the hall.

9        24. On October 8, 2020, investigators conducted surveillance of the Target  
10 Location. Investigators observed the Target Vehicle parked in a parking stall at the Target  
11 Location.

12        25. On October 13, 2020, SA Weathers applied for federal search warrants for the  
13 Target Location, Target Vehicle and MERCADO's cell phone (1B34). The warrants were  
14 authorized by Chief U.S. Magistrate Judge Brian A. Tsuchida. That same date,  
15 SA Weathers, SCIDEU and the Bellingham FBI executed these search warrants. I  
16 participated in the execution of these warrants as well.

17        26. Prior to execution of the search warrants, SA Weathers spoke with  
18 MERCADO's mother by phone. When investigators arrived at the Target Location,  
19 MERCADO's mother was in the residence. MERCADO's mother told SA Weathers that  
20 she lived at Target Location with her boyfriend and MERCADO. MERCADO's mother  
21 identified MERCADO's bedroom (referred to herein as Room F). MERCADO's mother  
22 stated that she did not allow MERCADO to possess drugs, alcohol, firearms or ammunition  
23 in the apartment, and she advised that there should not be any drugs, firearms or  
24 ammunition in the residence. MERCADO's mother further advised that she sold Target  
25 Vehicle to MERCADO for \$3,000, and he had paid \$1,000 to her. No bill of sale was  
26 completed. MERCADO's mother also advised Individual 1 was MERCADO's girlfriend.

27        27. During the execution of the search warrant, investigators identified that the  
28 Target Location was a two-bedroom, two-bathroom, single level apartment with an open



1 concept living area. The rooms were labeled as living room (Room A), kitchen/dining area  
2 (Room B), common area bathroom (Room C), bedroom (Room F), master bedroom (Room  
3 D) and master bathroom (Room E). During the search of Room F, investigators took  
4 photographs of various law enforcement documents, mail, artwork, identification cards and  
5 a bank card's that corroborated that the room was MERCADO's bedroom as identified by  
6 his mother.

7 28. During the search of the Target Location, the FBI seized the following items  
8 from MERCADO's bedroom (Room F):

- 9 (a) 1B35 - A black plastic bag with (16) 9 mm pistol ammunition found on the  
10 floor next to the closet;
- 11 (b) 1B36 - Two pieces of mail addressed to MERCADO at the Target Location  
12 from the television stand;
- 13 (c) 1B37 - Two AWS electronic scales;
- 14 (d) 1B38 - iPhone SE Gold from the television stand;
- 15 (e) 1B39 - Pink/orange pills in green alien head small bag (suspected of being  
16 counterfeit suboxone 8mg pills);
- 17 (f) 1B40 - One \$1 bill with suspected marijuana rolled up inside from the  
18 television stand;

19 29. The FBI also seized one .40 caliber pistol round (1B41) from the back of the  
20 toilet in the common area bathroom (Room C) and a Samsung Galaxy S8 with a white  
21 "KING" sticker (1B42) from a purse in the kitchen (Room B). Item 1B42 appeared to be a  
22 direct match to the phone photographed during Trooper Wilcox search of the Target  
23 Vehicle.

24 30. During the search of the Target Vehicle, the FBI seized the following items:

- 25 (a) 1B43 - Visa US Bank card for Individual 1;
- 26 (b) 1B44 - Suspected marijuana with pipe;
- 27 (c) 1B45 - Two prescription bottles with pills subscribed to a third party; and
- 28 (d) 1B46 - Black leather holster from the trunk.

31. Pursuant to two separate federal search warrant issued to SA Weathers in the Western District of Washington (Case No. MJ20-654 for 1B34 and Case No. MJ20-655 for 1B38 and 1B42), I requested that the regional FBI digital laboratory obtain downloads of all three cell phones. To date, Item 1B38 has been locked and encrypted, and the laboratory has been attempting to break the encryption. Successful downloads of cell phones 1B34 (seized from MERCADO's property at the Skagit County Jail) and 1B42 (phone with "KING" sticker observe by Trooper Wilcox during the search of the Target Vehicle) were obtained by the laboratory and provided to the FBI.

32. I conducted a review of the download of 1B34 and identified the following digital evidence:

- (a) Various messages identifying a user of the phone to be MERCADO (sometimes referred to by the nickname “kriminal”);
  - (b) 28 images, search history, web history or messages pertaining to marijuana or drugs;
  - (c) 210 images search history and web history related to firearms; and
  - (d) Various searches of the Sunny Side and Skagit County Jail rosters.
33. I conducted a review of 1B42 and identified the following:
- (a) Various images, auto fills and messages identifying the user of the phone as MERCADO;
  - (b) 9 images, searched items or videos related to the possession of marijuana or drugs;
  - (c) 12 images and videos of firearms;
  - (d) Various searches related to Skagit County and Whatcom County Jail rosters and the Washington prisoner inmate search; and
  - (e) Various searches related to the disassembly of firearms.

## Interstate Nexus

34. On November 5, 2020, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) SA Catherine Cole, a certified Interstate Firearms and Ammunition Nexus Expert,

1 who has been trained in the recognition of firearms and ammunition and their origin of  
2 manufacture, examined photos of the firearm and ammunition related to this investigation.  
3 These photos included, but were not limited to, photos of the following ammunition:

4 (a) 1B35 – Various rounds of 9mm Luger caliber ammunition containing the  
5 markings - all of which were seized by the FBI from MERCADO's bedroom:

6 1) "BARNES 9mm LUGER +P" on the head-stamp;

7 2) "JAG 9mm LUGER" on the head-stamp; and

8 3) "WIN 9mm LUGER" on the head-stamp; and

9 (b) Exhibit 1B41 – A round of .40S&W caliber ammunition containing the  
10 markings "WINCHESTER 40 S&W" - seized by the FBI from the common  
11 bathroom at the Target Residence.

12 35. SA Cole determined that the above-identified rounds of ammunition were not  
13 manufactured in the State of Washington. Based upon her experience, knowledge and  
14 research, it is SA Cole's opinion that all the above-listed rounds of ammunition are  
15 ammunition as defined in Title 18 U.S.C., Chapter 44, Section 921(a)(17)(a). Finally, it is  
16 also SA Cole's opinion that, because the above-listed ammunition was not manufactured in  
17 the state of Washington, it therefore must have traveled in interstate commerce prior to  
18 MERCADO's possession of it in the State of Washington.

19 //

20 //

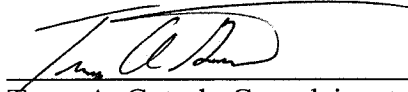
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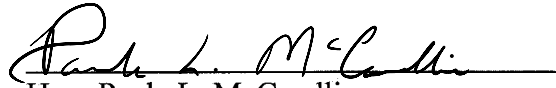
23 //

**CONCLUSION**

36. Based on the foregoing, I submit that probable cause exists to believe that ERIK MERCADO knowingly possessed the ammunition seized from the Target Residence and has committed the crime of Felon in Possession of Ammunition, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

  
Terry A. Getsch, Complainant  
Special Agent, FBI

The above-named agent provided a sworn statement attesting to the truth of the contents of the foregoing affidavit on the 25th day of January, 2021. Based on the information contained in this affidavit, the Court hereby finds that there is probable cause to believe the Defendant committed the offense set forth in the Complaint.

  
Hon. Paula L. McCandlis  
United States Magistrate Judge